



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-16-00106-CR
IN RE: THE STATE OF TEXAS,	§	
	§	AN ORIGINAL PROCEEDING
Relator.	§	
	§	IN MANDAMUS

OPINION

The State of Texas has filed a petition asking the Court is issue the writ of mandamus against the Honorable Sam Medrano, Judge of the 409th District Court of El Paso County, Texas, ordering him to vacate an order requiring the District Attorney's Office to provide the defendant, Alfonso Cedillo, with copies of the video-recorded forensic interview of each child victim in an indecency with a child prosecution. We conditionally grant mandamus relief.

FACTUAL SUMMARY

The facts are essentially undisputed. The Real Party in Interest, Alfonso Cedillo is charged by indictment with three counts of indecency with a child alleged to have been committed on or about February 16, 2012. There is a different child victim for each count.

On January 21, 2014, Cedillo filed a motion requesting that he be allowed to transcribe the video-recorded forensic interviews of each child victim. According to the State, the trial court granted that motion. The District Attorney's Office has maintained possession of these transcriptions, and pursuant to the trial court's order, the transcriptions will be turned over to the

defendant after each victim testifies.

On October 29, 2014, Cedillo filed a motion to declare Article 39.15 of the Code of Criminal Procedure unconstitutional because it prohibits the copying of the child victim's video-recorded forensic interviews. He asserted in the motion that the prohibition violates his right to the effective assistance of counsel and a fair trial. Following a hearing, the trial court denied the motion.

At a status hearing on January 26, 2015, Cedillo once again raised his complaint about statutory prohibition on copying the child victims' interviews. Cedillo requested that the trial court enter a protective order that would allow defense counsel and their experts to view the forensic-interview recordings within the confines of the 409th District Court without any representatives of the State being present. The State opposed this request because it would require the State to relinquish custody of the recordings in violation of Articles 39.14 and 39.15 of the Code of Criminal Procedure. Respondent stated that he would provide a place within the confines of the 409th District Court for the defense to view the recordings, but a representative from the District Attorney's Office would be present. Cedillo again objected to the presence of a representative of the District Attorney's Office, and stated that it would chill the effectiveness of counsel's representation. The trial court did not rule on Cedillo's request for a protective order, and it ruled that the materials would remain in the State's possession, and the defense would be allowed to view the recordings in the presence of a representative of the District Attorney's Office.

Approximately sixteen months later, Cedillo filed a motion asking the trial court to require the State to provide copies of the video-recorded forensic interviews of the child victims. The trial court conducted a hearing on Cedillo's motion the following day. Cedillo's counsel asserted that courts in other Texas counties are ordering that copies of the recordings be given to the defense and issuing a protective order to prevent the defense from disclosing or disseminating the

materials. The State objected to the motion as being a violation of Article 39.15, and the prosecutor argued that Cedillo's attorneys and expert had been allowed to view the interviews on multiple occasions outside of the presence of a representative from the District Attorney's Office. The trial court verbally granted Cedillo's motion and instructed Cedillo to provide him with a protective order. Cedillo's attorney prepared a protective order and submitted it to the prosecutor for her approval, but the prosecutor refused to "sign off" on it. According to the prosecutor's affidavit, Cedillo's attorney has not submitted the order to the trial court for approval.

The State filed a mandamus petition and motion requesting a stay. The Court granted the State's motion and ordered Respondent to stay proceedings in the case pending resolution of the original proceeding.

CHILD VICTIM'S INTERVIEW

In its sole issue, the State contends that the trial court's order requiring the State to provide Cedillo with a copy of the child victims' forensic interviews violates the statutory prohibition against ordering the State to provide the defense with a copy of a video-recorded forensic interview of a child-victim of sexual abuse. Cedillo responds that mandamus review is not available because the issue whether he had an "ample opportunity" to view the recordings is at the sole discretion of the trial court.

The Standard of Review

To be entitled to mandamus relief, the relator must make two showings: (1) that he has no adequate remedy at law, and (2) that what he seeks to compel is a ministerial act. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex.Crim.App. 2013); see *In re State of Texas*, 162 S.W.3d 672, 675 (Tex.App.--El Paso 2005, orig. proceeding). The ministerial act requirement is satisfied if the relator can show a clear right to the relief sought. *Weeks*, 391 S.W.3d at 122. A clear right to relief is shown when the facts and circumstances dictate but one rational decision "under

unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles.” *Id.*, quoting *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex.Crim.App. 2011).

No Remedy by Appeal

The first question is whether the State has an adequate remedy at law. The State has only a limited right of appeal. *See* TEX.CODE CRIM.PROC.ANN. art. 44.01 (West Supp. 2016). Its right to appeal does not include the discovery order entered by the trial court in this case. Therefore, mandamus relief is appropriate if the State establishes it has a clear right to the relief sought.

Clear Right to Relief Sought

Under the second component of the mandamus standard, the State must also show that it has a clear right to the relief sought. Article 39.14 of the Code of Criminal Procedure provides for limited discovery in a criminal case. *See* TEX.CODE CRIM.PROC.ANN. art. 39.14 (West Supp. 2016). Further, discovery under Article 39.14 is subject to the restrictions provided by Section 264.408 of the Family Code and Article 39.15 of the Code of Criminal Procedure. *See* TEX.CODE CRIM.PROC.ANN. art. 39.14(a).

Article 39.15 of the Code of Criminal Procedure, which is titled “Discovery of Evidence Depicting or Describing Abuse of or Sexual Conduct By Child or Minor,” provides the procedure for the trial court to follow when a defendant in a case involving sexual abuse of a child requests discovery of the child victim’s forensic interview. *See* TEX.CODE CRIM.PROC.ANN. art. 39.15(c), (d); *In re Ligon*, No. 09-14-00262-CR, 2014 WL 2902324 (Tex.App.--Beaumont, June 26, 2014, orig. proceeding)(not designated for publication). Pertinent to this case, Subsections (c) and (d) provide as follows:

(c) A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material described by Subsection (a), provided that the state makes the property or material reasonably available to the

defendant.

(d) For purposes of Subsection (c), property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides ample opportunity for the inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial.

TEX.CODE CRIM.PROC.ANN. art. 39.15(c), (d).

Consistent with Article 39.15(c) and (d), Section 264.408(d-1) of the Family Code provides that:

(d-1) A video recording of an interview described by Subsection (d) is subject to production under Article 39.14, Code of Criminal Procedure, and Rule 615, Texas Rules of Evidence. A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce a video recording of an interview described by Subsection (d), provided that the prosecuting attorney makes the video recording reasonably available to the defendant in the same manner as property or material may be made available to defendants, attorneys, and expert witnesses under Article 39.15(d), Code of Criminal Procedure.

TEX.FAM.CODE ANN. § 264.408(d-1)(West Supp. 2016).

Cedillo contends that mandamus review of the trial court's order is not available because the trial court has discretion to determine whether the defense has had an "ample opportunity" to view the recordings. The question is not whether the trial court had discretion to decide an issue, it is whether the State has shown that the facts and circumstances dictate but one rational decision under well-settled and controlling legal principles. *See Weeks*, 391 S.W.3d at 122. If this showing is made, the relator has established a clear right to relief.

The record reflects that the District Attorney's Office has made the recorded interviews available to Cedillo's attorney and defense expert, and defense counsel has viewed the recordings on multiple dates, including April 10, 2015, May 22, 2015, August 25, 2015, August 27, 2015, and June 16, 2015. There is no evidence that the State has ever denied a request by the defense to view the recordings. The defense expert has also viewed the recordings. Consistent with the applicable statutes, the defense attorneys and expert were required to view the recordings at facilities

controlled by the District Attorney's Office or the trial court. The State generally insisted that a member of the District Attorney's Office be present, but the mandamus record reflects that this restriction was not enforced on every occasion that the defense viewed the recordings. Cedillo's attorneys complained to the trial court that they were required to view the recordings during the regular business hours of the District Attorney's Office, and this made it difficult for them to find time to view the recordings due to their busy schedules. The requirement that the recordings be viewed during regular business hours is not unreasonable given that the viewing had to be in the facilities controlled by the State or the court. Further, the record shows that counsel, and the defense expert, have viewed the recordings on several different dates.

There is no evidence in the record which would support a conclusion by the trial court that the State has not provided an ample opportunity for defense counsel and the defense expert to view the video-recorded forensic interviews of the child victims. Consequently, the trial court did not have discretion to order the State to provide the defense with a copy of the recorded interviews. In other words, the facts and circumstances dictate but one rational decision under well-settled and controlling legal principles. We sustain the issue presented and conditionally grant mandamus relief. Respondent is directed to withdraw the order requiring the State to provide Cedillo with a copy of the child victims' recorded interviews. We are confident Respondent will act in accordance with this opinion. The writ of mandamus will issue only if Respondent fails to do so.

April 26, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Palafox, JJ.

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